

Internal Revenue Service, Treasury

§ 1.6664-0

the twenty million dollar or 20% of gross receipts test under section 6662(h). The net section 482 adjustment (21 million dollars) is greater than twenty million dollars and thus constitutes a gross valuation misstatement. Accordingly, the total adjustment is subject to the net adjustment penalty equal to 40 percent of the underpayment of tax attributable to the 21 million dollar gross valuation misstatement. The six million dollar adjustment will not be separately included for purposes of any additional penalty under section 6662.

(g) *Effective date.* This section is effective February 9, 1996. However, taxpayers may elect to apply this section to all open taxable years beginning after December 31, 1993.

[T.D. 8656, 61 FR 4880, Feb. 9, 1996; T.D. 8656, 61 FR 14248, Apr. 1, 1996; 62 FR 46877, Sept. 5, 1997]

§ 1.6662-7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

(a) *Scope.* The Omnibus Budget Reconciliation Act of 1993 made certain changes to the accuracy-related penalty in section 6662. This section provides rules reflecting those changes.

(b) *No disclosure exception for negligence penalty.* The penalty for negligence in section 6662(b)(1) may not be avoided by disclosure of a return position.

(c) *Disclosure standard for other penalties is reasonable basis.* The penalties for disregarding rules or regulations in section 6662(b)(1) and for a substantial understatement of income tax in section 6662(b)(2) may be avoided by adequate disclosure of a return position only if the position has at least a reasonable basis. See § 1.6662-3(c) and §§ 1.6662-4(e) and (f) for other applicable disclosure rules.

(d) *Reasonable basis.* For purposes of §§ 1.6662-3(c) and 1.6662-4(e) and (f) (relating to methods of making adequate disclosure), the provisions of § 1.6662-3(b)(3) apply in determining whether a return position has a reasonable basis.

[T.D. 8617, 60 FR 45665, Sept. 1, 1995, as amended by T.D. 8790, 63 FR 66435, Dec. 2, 1998]

§ 1.6664-0 Table of contents.

This section lists the captions in §§ 1.6664-1 through 1.6664-4T.

§ 1.6664-1 Accuracy-related and fraud penalties; definitions and special rules.

- (a) In general.
- (b) Effective date.
 - (1) In general.
 - (2) Reasonable cause and good faith exception to section 6662 penalties.

§ 1.6664-2 Underpayment.

- (a) Underpayment defined.
- (b) Amount of income tax imposed.
- (c) Amount shown as the tax by the taxpayer on his return.
 - (1) Defined.
 - (2) Effect of qualified amended return.
 - (3) Qualified amended return defined.
 - (4) Special rule for qualified amended returns.
- (d) Amounts not so shown previously assessed (or collected without assessment).
- (e) Rebates.
- (f) Underpayments for certain carryback years not reduced by amount of carrybacks.
- (g) Examples.

§ 1.6664-3 Ordering rules for determining the total amount of penalties imposed.

- (a) In general.
- (b) Order in which adjustments are taken into account.
- (c) Manner in which unclaimed prepayment credits are allocated.
- (d) Examples.

§ 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.

- (a) In general.
- (b) Facts and circumstances taken into account.
 - (1) In general.
 - (2) Examples.
 - (c) Reliance on opinion or advice.
 - (i) Fact and circumstances; minimum requirements.
 - (ii) All facts and circumstances considered.
 - (ii) No unreasonable assumptions.
 - (2) Advice defined.
 - (3) Cross-reference.
 - (d) Pass-through items.
 - (e) Special rules for substantial understatement penalty attributable to tax shelter items of corporations.
 - (1) In general; facts and circumstances.
 - (2) Reasonable cause based on legal justification.
 - (i) Minimum requirements.
 - (A) Authority requirement.
 - (B) Belief requirement.
 - (ii) Legal justification defined.
 - (3) Minimum requirements not dispositive.
 - (4) Other factors.
 - (f) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
 - (g) Valuation misstatements of charitable deduction property.